

CCRB INVESTIGATIVE RECOMMENDATION

Investigator Assigned: Alyssa Rogowski	Team: Squad #7	CCRB Case # : 201806620	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourtesy
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Date/Time of Incident: Sun, 08/12/2018 06:03 PM	Location of Incident: Inside the 46th Precinct stationhouse, 2120 Ryer Avenue, Bronx, NY 10457	Pct. of Occurrence: 46	Date S.O.L. Expires: 02/12/2020	
Date/Time C/V Reported: Sun, 08/12/2018 06:23 PM	C/V Reported At: CCRB	How C/V Reported: On-line website	Date/Time Received at CCRB: Sun, 08/12/2018 06:23 PM	

Complainant/Victim	Type	Home Address
1. [REDACTED]	Comp/Victim	[REDACTED]

Witness(es)	Home Address
1. [REDACTED]	Unknown

Subject Officer(s)	Shield	TaxID	Command
1. POM Yefersson Salasmartinez	15419	957123	046 PCT
2. POF [REDACTED]	04014	959309	046 PCT

Officer(s)	Allegation	Recommendation
A. POM Yefersson Salasmartinez	Force: Police Officer Yefersson Salasmartinez used physical force against [REDACTED]	A. Substantiated
B. POM Yefersson Salasmartinez	Abuse of Authority: Police Officer Yefersson Salasmartinez threatened to arrest [REDACTED]	B. Substantiated
C. POM Yefersson Salasmartinez	Abuse of Authority: Police Officer Yefersson Salasmartinez refused to provide his name to [REDACTED]	C. Substantiated
D. POM Yefersson Salasmartinez	Abuse of Authority: Police Officer Yefersson Salasmartinez did not process [REDACTED] complaint regarding an officer.	D. Unsubstantiated
E. POF [REDACTED]	Abuse of Authority: Police Officer [REDACTED] did not process [REDACTED] complaint regarding an officer.	E. Substantiated

Case Summary

On August 12, 2018 at 6:23pm, Ms. [REDACTED] filed the following complaint online with the CCRB.

On August 12, 2018 at approximately 6:03pm, Ms. [REDACTED] went to the 46th Precinct stationhouse in the Bronx. Police Officer Yefersson Salasmartinez of the 46th Precinct followed Ms. [REDACTED] into the stationhouse and told her to leave. PO Salasmartinez then used force against Ms. [REDACTED] to move her towards the door (**Allegation A: Force, substantiated**) and threatened to arrest her (**Allegation B: Abuse of Authority, substantiated**). When Ms. [REDACTED] asked to make a complaint against him, PO Salasmartinez refused to provide his name and shield (**Allegation C: Abuse of Authority, substantiated**) and allegedly did not allow Ms. [REDACTED] to file a complaint (**Allegation D: Abuse of Authority, unsubstantiated**). Ms. [REDACTED] called 911 and told the operator that she wanted to speak with a supervisor at the 46th Precinct stationhouse. Police Officer [REDACTED] of the 46th Precinct responded and told Ms. [REDACTED] that if she wanted to make a complaint, she should call the CCRB (**Allegation E: Abuse of Authority, substantiated**).

The investigation obtained video footage from surveillance cameras inside and outside the 46th Precinct stationhouse that capture the front entrance and area in front of the desk. (Board Review 10, 11, and 06).

Findings and Recommendations

Allegation A—Force: Police Officer Yefersson Salasmartinez used physical force against

Ms. [REDACTED] recalled that on August 12, 2018 at around 6:03pm, she went to the 46th Precinct stationhouse to pick up her daughter as part of a weekly child custody arrangement (Board Review 01 and 02). Ms. [REDACTED] stated that usually she enters the stationhouse and her daughter is already inside and that typically, she does not interact with any officers while executing this exchange.

As Ms. [REDACTED] approached the stationhouse entrance, she noticed one officer, identified as PO Salasmartinez, standing outside talking with a civilian. PO Salasmartinez did not say anything to or acknowledge Ms. [REDACTED] so she continued past him and into the stationhouse. Ms. [REDACTED] was standing at the gate when PO Salasmartinez approached her from behind, grabbed her right arm, pulled her, and asked her why she had just walked into the stationhouse without speaking to him. Ms. [REDACTED] tried to reason with PO Salasmartinez that she did not realize he had wanted her to acknowledge him and that she was only there to pick up her daughter but PO Salasmartinez stated that he did not care and continued to pull her and yell at her to get out.

Video footage of this incident was obtained from interior surveillance cameras from the 46th Precinct stationhouse and is embedded below (Board Review 14).



Interior.mp4

The video shows that Ms. [REDACTED] walks to the gate where she appears to be standing quietly. PO Salasmartinez opens the stationhouse door and gestures for Ms. [REDACTED] to come towards him for about 20 seconds. He then enters the stationhouse and approaches her, immediately placing his right hand on her shoulder. As he places his right hand on her upper arm, her right arm is pulled forward and shoulders turned slightly towards the door, indicating that

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some force was applied to her arm. She then raises her right arm to remove PO Salasmartinez' right hand. After shaking his hand off her shoulder, Ms. [REDACTED] appears to be more animated in her conversation with PO Salasmartinez, gesturing with her hands. They appear to engage in conversation for about 25 seconds, then Ms. [REDACTED] walks towards the door, where her daughter and daughter's father, Mr. [REDACTED] are standing. Ms. [REDACTED] pauses briefly as she approaches them, turns towards PO Salasmartinez, then he makes contact with her 4 additional times, two of which clearly cause Ms. [REDACTED] to stumble forwards. Each time he makes contact with Ms. [REDACTED] she appears to become more emphatic. The video also demonstrates that Ms. [REDACTED] was only in the stationhouse for about 1:22 minutes.

PO Salasmartinez stated that on August 12, 2018, he was assigned to stationhouse security at the 46th Precinct stationhouse (Board Review 03). At around 6:00pm, PO Salasmartinez was standing outside the door to the stationhouse at the top of the stairs speaking with a group of civilians when Ms. [REDACTED] walked past him into the stationhouse. PO Salasmartinez called out to her, trying to get her attention but she did not acknowledge him. When Ms. [REDACTED] entered the stationhouse, the door closed behind her. She was inside for 2-3 seconds when PO Salasmartinez opened the door and remaining outside, called into the stationhouse asking Ms. [REDACTED] how he could help her and for her to please come back towards him so that he could assist her.

PO Salasmartinez spoke to her for about 20 seconds from the doorway before he stepped into the stationhouse and approached Ms. [REDACTED] at the gate. PO Salasmartinez recalled that he and Ms. [REDACTED] were standing about three feet apart at this point. PO Salasmartinez asked her why she did not ask him if she could enter the stationhouse, why she was at the stationhouse, and how he could help her. Ms. [REDACTED] speaking at a regular volume, replied that as PO Salasmartinez did not say anything to her when she walked by, she did not realize he wanted her to speak to him. PO Salasmartinez replied that he had called out to her from the door and that as Ms. [REDACTED] did not tell him why she was there, he wanted her to come outside so that he could ask her why she was there. He was not asking her to leave for any other reason.

PO Salasmartinez again asked Ms. [REDACTED] to exit the stationhouse and she began to speak in a louder volume, telling him "You don't tell me what to do. You can't tell me where to stand." PO Salasmartinez told her that he asked her to leave the Precinct and because she refused, he would escort her out of the Precinct. PO Salasmartinez stated that at this point he confronted her, meaning that he moved closer to her and put his hand on her shoulder, telling her that she needed to leave.

PO Salasmartinez stated that as they were speaking, he started to move Ms. [REDACTED] away from the gate back towards the main entrance. PO Salasmartinez denied that he pushed or shoved her, though he stated he moved her. PO Salasmartinez did not recall grabbing her. His hand was not on her shoulder the whole time he was escorting Ms. [REDACTED] out of the stationhouse but he does not recall if he put his hand back on her at any point.

After viewing the stationhouse video footage in his interview, PO Salasmartinez acknowledged that his hand was on her at the instances visible in the footage, but stated that he was not using any sort of strength or force to move her and again denied that he ever pushed or shoved Ms. [REDACTED]

The investigation was unable to determine the identity of the black male officer seen in the footage to have witnessed the incident. Police Officer David Abadia of the 46th Precinct was interviewed but was also unable to identify the officer (Board Review 05). Mr. [REDACTED] refused to provide a statement.

NYPD Patrol Guide procedure 221-01 states that, "Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances" (Board Review 12).

It is undisputed that PO Salasmartinez made contact with Ms. [REDACTED]. While PO Salasmartinez denied that he ever pushed Ms. [REDACTED], it is evident in the video that each of the five times PO Salasmartinez makes contact with Ms. [REDACTED] arm or back, either her upper body appears to twist forward or she stumbles forward as a result of the contact. This corroborates Ms. [REDACTED] assertion that PO Salasmartinez used force against her.

PO Salasmartinez' only justification for demanding that Ms. [REDACTED] exit the stationhouse and subsequently making contact with Ms. [REDACTED] is that he wanted to speak with her outside the entrance to the stationhouse. PO Salasmartinez opted to employ force shortly after first interacting with Ms. [REDACTED] about 12 seconds pass between when he first calls to Ms. [REDACTED] and when he first makes contact with her in the video, and Ms. [REDACTED] behavior at the time does not appear to necessitate force as she was waiting calmly and not disturbing the peace in the stationhouse. Based on the above, there appears to be no legal justification for Ms. [REDACTED] to leave the stationhouse or any reason that would require a forceful removal from the stationhouse. Furthermore, PO Salasmartinez never alleged any fear for his own safety or that of another person nor did he provide any other rational that may have justified his use of force. PO Salasmartinez' decision to employ force because Ms. [REDACTED] had not spoken to him outside the stationhouse escalated a seemingly peaceful custody exchange. PO Salasmartinez' use of force was not reasonable under the circumstances and it is therefore recommended that **allegation A** be closed as **substantiated**.

Allegation B—Abuse: Police Officer Yefersson Salasmartinez threatened to arrest [REDACTED]

Ms. [REDACTED] recalled that while she was trying to explain to PO Salasmartinez that she was only at the stationhouse to pick up her daughter, he told her he did not care and that she had to get out. Ms. [REDACTED] then asked to speak with a supervisor and make a complaint about him to which PO Salasmartinez responded that if she did not get out she would be arrested. When Ms. [REDACTED] asked him what he would arrest her for, PO Salasmartinez ignored her and continued to tell her to get out.

PO Salasmartinez recalled that he asked Ms. [REDACTED] several times to come back outside the entrance so that he could assist her. He stated during his interview that the only reason he asked her to leave was because he wanted to speak with her outside about why she was at the stationhouse. PO Salasmartinez stated that when he is acting as stationhouse security, he expects people to converse with him about their purpose at the stationhouse prior to entering. When Ms. [REDACTED] continued to refuse to leave, PO Salasmartinez told her that if she refused to leave, she would be arrested or issued a summons. In his interview, PO Salasmartinez stated that Ms. [REDACTED] could have been arrested for trespassing and disorderly conduct, though he was unable to identify the applicable subsection of disorderly conduct. He also recalled that Ms. [REDACTED] only began to yell when he placed his hand on her arm, which point she yelled, "Don't touch me."

The video footage obtained from this incident indicates that Ms. [REDACTED] interaction with PO Salasmartinez was less than two minutes in length (Board Review 14). While there is no audio in the video, the footage shows that Ms. [REDACTED] appears to enter the stationhouse calmly

and waits by the gate until PO Salasmartinez approaches her. Only after PO Salasmartinez makes contact with her does Ms. [REDACTED] become more emphatic, gesturing with her hands.

NYS Penal Law Section 240.20 states that "A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof: 1. He engages in fighting or in violent, tumultuous or threatening behavior; or 2. He makes unreasonable noise; or 3. In a public place, he uses abusive or obscene language, or makes an obscene gesture; or ..." (Board Review 17).

NYS Penal Law Section 140.00 states that "A person 'enters or remains unlawfully' in or upon premises when he is not licensed or privileged to do so. A person who, regardless of his intent, enters or remains in or upon premises which are at the time open to the public does so with license or privilege unless he defies a lawful order not to enter or remain, personally communicated to him by the owner of such premises or other authorized person." NYS Penal Law Section 140.05 defines the term trespass as "A person is guilty of trespass when he knowingly enters or remains unlawfully in or upon premises." (Board Review 16).

In People v. Reape, 22 Misc. 3d 615, the Court held that a defendant could be arrested for trespassing at a police stationhouse when allowing the defendant to stay upon police property would, "interfere with the ordinary use of the property of the Police Department and by other members of the public." Further, the officer in this case "did communicate a lawful order for the defendant to quit the area" and the defendant refused to leave when asked (Board Review 19).

In Ms. [REDACTED] case, when PO Salasmartinez threatened to arrest her for trespassing, the video shows that Ms. [REDACTED] had been standing calmly in a public area of the stationhouse waiting to participate in a custody exchange and was not interfering with any police business. Additionally, the video demonstrates that when PO Salasmartinez approached Ms. [REDACTED] she had not engaged in any behavior that rose to the level of disorderly conduct. The investigation concluded that PO Salasmartinez' threat to arrest Ms. [REDACTED] had no legal basis and rather was an attempt to retaliate for a perceived action of disrespect. As such, this threat served no legitimate law enforcement purpose and it is therefore recommended that **allegation B** be closed as **substantiated**.

Allegation C—Abuse: Police Officer Yefersson Salasmartinez refused to provide his name to [REDACTED]

Ms. [REDACTED] recalled that after PO Salasmartinez told her she would be arrested if she did not leave the stationhouse, she asked for his name and he told her no. Once she had exited the stationhouse, she called 911 and told the operator that an officer had disrespected her, pushing and pulling her in front of her daughter (Board Review 18). Ms. [REDACTED] did not provide the name of the officer nor did she allege to the 911 operator that the officer had refused to provide his name. The 911 operator told her someone would be sent to her location and PO [REDACTED] came out to assist her. Ms. [REDACTED] told PO [REDACTED] that the officer, PO Salasmartinez, had refused to provide his name. PO [REDACTED] told Ms. [REDACTED] to look at his shield for his name and Ms. [REDACTED] obtained PO Salasmartinez' name from his badge.

The exterior angles of video obtained from the 46th Precinct Stationhouse can be best viewed in the compilation video in IA #58 (Board Review 06). This file was too large to be embedded.

Towards the end of the clip, at around 6:21, PO [REDACTED] can be seen gesturing to PO Salasmartinez and gesturing towards her own badge then walking away. Ms. [REDACTED] then appears to take a photograph of PO Salasmartinez before walking away.

PO Salasmartinez recalled that after Ms. [REDACTED] had exited the stationhouse and was standing outside on the sidewalk, he asked her if she wanted his information and offered his name and badge number. Ms. [REDACTED] replied that she did not want to speak with him and she refused to take his contact card. PO Salasmartinez stated that Ms. [REDACTED] never asked him for his name or shield and that he does not recall her asking to speak with a supervisor. PO Salasmartinez stated that he only overheard PO [REDACTED] asking Ms. [REDACTED] if she had called 911 and that he never heard Ms. [REDACTED] tell PO [REDACTED] that she wanted to file a complaint. PO Salasmartinez recalled Ms. [REDACTED] taking photos of him after her conversation with PO [REDACTED].

PO [REDACTED] stated that Ms. [REDACTED] did not tell her which officer she had interacted with at the stationhouse nor did she ask for any other officer's name (Board Review 04).

NYPD Patrol Guide Procedure 206-03, Section "Schedule B Violations" states that "Failure to give name and shield number to person requesting" is a violation of department regulations (Board Review 15).

Throughout the investigation, the video consistently corroborated Ms. [REDACTED] testimony. Ms. [REDACTED] did not have PO Salasmartinez's name when she called 911 and the video corroborates her statement that she spoke with PO [REDACTED] about PO Salasmartinez and obtaining his name, then took a photo of PO Salasmartinez. The investigation credits her testimony that PO Salasmartinez did not identify himself when asked. It is therefore that **allegation C** be closed as **substantiated**.

Allegation D—Abuse: Police Officer Yefersson Salasmartinez did not process [REDACTED] complaint regarding an officer.

Ms. [REDACTED] recalled that while arguing with PO Salasmartinez inside the stationhouse, Ms. [REDACTED] told him that she wanted to speak with a supervisor and make a complaint about him. PO Salasmartinez refused to get a supervisor for her and continued to tell her to out of the stationhouse.

PO Salasmartinez denied that Ms. [REDACTED] ever asked him to file a complaint and did not recall Ms. [REDACTED] ever asking to speak with a supervisor.

NYPD Patrol Guide Procedure 207-31 outlines the procedure for processing civilian complaints against members of service. According to section 2 of this procedure, members of service receiving the complaint must process complaints made in person as follows, "1. Interview complainant 2. Give complainant first copy of Civilian Complaint Report (PD313-154) to be prepared in complainant's own handwriting." According to section 2d of this procedure, if the person making the complaint in person does not want to immediately make the complaint, the member of service receiving the complaint must "advise complainant that the complaint may be delivered in person, taken over the telephone, or sent by mail to any patrol Precinct, police service area, transit district, traffic unit, Internal Affairs Bureau, or any other officer of the Department, including the officer of the Police Commissioner or office of a deputy commissioner. IN ADDITION, provide the complainant with the telephone number of the Civilian Complaint Review Board, Intake Unit at 1-800-341-2272." (Board Review 13)

It is undisputed that Ms. [REDACTED] wanted to file a complaint against PO Salasmartinez and that she called 911 to speak to an officer about her interaction with PO Salasmartinez. While it is probable that Ms. [REDACTED] asked to speak with a supervisor while PO Salasmartinez was removing her from the stationhouse, without additional evidence, the investigation could not determine by a preponderance of the evidence if Ms. [REDACTED] specifically asked to file a

complaint and if PO Salasmartinez refused to help her file a complaint. It is therefore recommended that **Allegation D** be closed as **unsubstantiated**.

Allegation E—Abuse: Police Officer [REDACTED] did not process [REDACTED] complaint regarding an officer.

Ms. [REDACTED] recalled that when she exited the stationhouse she called 911 to report that she wanted to speak with a supervisor. After about 20 minutes, PO [REDACTED] exited the stationhouse and approached her. She asked if Ms. [REDACTED] had requested police assistance to which Ms. [REDACTED] replied yes and that an officer had put his hands on her. PO [REDACTED] stated that if she wanted to make a complaint, she should call the CCRB. Ms. [REDACTED] told her that the officer had refused to provide his name and the female officer told Ms. [REDACTED] to go look at his name as he was still standing outside.

PO [REDACTED] recalled that on August 12, 2018 at around 6:00pm, she responded to a radio call for a woman, later identified as Ms. [REDACTED] outside the stationhouse requesting assistance. PO [REDACTED] approached Ms. [REDACTED] and asked her if she had called 911. Ms. [REDACTED] responded that she had called 911 and that she had an altercation with an officer while in the stationhouse. PO [REDACTED] did not recall if the woman told her specifically what the interaction with the officer had been but stated that it sounded like an incident that would fall under CCRB jurisdiction.

PO [REDACTED] wrote down the information for the CCRB, phone number and email, as well as her own name and badge number and provided this information to Ms. [REDACTED]. PO [REDACTED] believes that civilians can file complaints at the stationhouse but did not inform Ms. [REDACTED] that she could file a complaint at the stationhouse. PO [REDACTED] stated that Ms. [REDACTED] did not express to her that she wanted to file a complaint at the stationhouse and that when she gave Ms. [REDACTED] the paper with the CCRB information, Ms. [REDACTED] walked away without saying anything.

PO Salasmartinez recalled Ms. [REDACTED] speaking with PO [REDACTED] outside of the stationhouse. PO Salasmartinez initially stated that he overheard some of the conversation between PO [REDACTED] and Ms. [REDACTED]. He then stated that he only overheard PO [REDACTED] asking Ms. [REDACTED] if she had called 911. He never heard Ms. [REDACTED] tell PO [REDACTED] she wanted to file a complaint.

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By PO [REDACTED] own admission, she did not advise Ms. [REDACTED] that she could file her complaint in-person at the stationhouse. While PO [REDACTED] did make a good faith attempt to assist Ms. [REDACTED] she did not follow NYPD Patrol Guide Procedure 207-31 which requires officers to inform civilians that they can file at the precinct and provide the civilians with a complaint form. It is therefore recommended that **allegation E** be closed as **substantiated**.

Civilian and Officer CCRB Histories

- [REDACTED]
- [REDACTED]
- [REDACTED]

Mediation, Civil and Criminal Histories

- Ms. [REDACTED] declined to mediate this complaint.
- According to the Office of the Court Administration (OCA), Ms. [REDACTED] has no history of convictions in New York City (Board Review 08).
- As of October 25, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (Board Review 09).

Squad No.:

7

Investigator:

[Signature]

Signature

Inv. Poyowski

Print Title & Name

12/20/18

Date

Squad Leader:

[Signature]

Signature

Vanessa Rosen

Print Title & Name

12/20/18

Date

Reviewer:

Signature

Print Title & Name

Date